

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Johansson *et al.*

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For: COMPOSITION

Examiner: Boyer, Charles

Art Unit: 1751

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RESPONSE TO OFFICE ACTION

In response to the Office Action mailed on December 8, 2006, Applicants respond through their attorney as follows.

IN THE CLAIMS

Claims 1-5 (Canceled)

6. (Currently amended) A skin cleansing composition ~~consisting essentially of~~comprising:
- a) a water immiscible emollient oil at a concentration of ~~about 25~~30 to about 85 wt. %;
 - b) an emulsifying agent at a concentration of about 1 to ~~about~~10 wt. % capable of forming an emulsion, *in situ*, on the skin with the oil when water is added to the composition wherein said agent is a mixture of at least two emulsifiers, one having an HLB value ≤ 8 and one having an HLB value >8 ;
 - c) a water soluble, at least substantially insoluble in the composition, skin exfoliative and/or skin polishing material at a concentration of about 1 to about 50 wt. %;
 - d) a wax at a concentration of about 1 to ~~about 7~~10 wt. %; and
 - e) 0 to about 5% water,
- wherein the composition has no visual phase separation after 49 days at 25°C (77°F) and 43.3°C (110°F).
7. (Previously Presented) The composition of claim 6, wherein the skin exfoliative and/or polishing material is selected from the group consisting of xanthan gum, carboxymethyl starch, cellulose ether, hydroxyalkyl cellulose, salts, sugars, urea, water soluble urea derivatives, and mixtures thereof.
8. (Previously presented) The composition of claim 6, wherein the oil is selected from the group consisting of:
- a) mineral oils,
 - b) animal oils,

- c) vegetable oils,
- d) silicone oils,
- e) esters,
- f) organic alcohols,
- g) esters derived from lanolic acid,
- h) fatty free acids, and
- i) mixtures thereof.

9. (Previously Presented) The composition of claim 8, wherein the oil is selected from the group consisting of paraffin oil, petroleum jelly oil, purcellin oil, perhydrosqualene, fish oils, lanolin oil, sweet almond oil, palm oil, calophyllum oil, avocado oil, olive oil, castor oil, cereal germ oil, canola oil, sunflower oil, soybean oil, jojoba oil, dimethylpolysiloxane, cyclomethicone, butyl myristate, isopropyl myristate, cetyl myristate, isopropyl palmitate, butylstearate, hexadecyl stearate, isopropyl stearates, octyl stearate, isoceryl stearate, decyl oleate, hexyl laurate di-caprylate of propylene glycol, di-isopropyl adipate, oleic alcohol, linoleic alcohol, linolenic alcohol, isostearyl alcohol, octyl dodecanol, isopropyl lanolate, isocetyl lanolate, linoleic acid, myristic acid, palmitic acid, stearic acid, and mixtures thereof.
10. (Previously Presented) The composition of claim 6, wherein the emulsifying agent is selected from the group consisting of ethoxylated carboxylic acids, ethoxylated glycerides, glycol esters and derivatives thereof, monoglycerides, polyglyceryl esters, polyhydric alcohol esters and ethers, sorbitan/sorbitol esters, triesters of phosphoric acid, ethoxylated fatty alcohols, propoxylated polyoxyethylene (POE) ethers, and mixtures thereof.
11. (Previously presented) The composition of claim 10, wherein the emulsifying agent is selected from the group consisting of glycerol stearates, PEG-100

stearate, sorbitan stearates, PEG-40 stearate, steareth 2, steareth 20, steareth 100, polysorbate-20, laureth-1, laureth-23, polysorbate 80, sucrose distearate, glyceryl oleate, and mixtures thereof.

12. (Previously presented) The composition of claim 6, wherein the wax is selected from the group consisting of:
 - a. mineral waxes,
 - b. fossil waxes,
 - c. animal waxes,
 - d. vegetable waxes,
 - e. hydrogenated waxes which are solid at 25°C,
 - f. synthetic oils,
 - g. fatty esters which are solid at 25°C,
 - h. silicone oils, and
 - i. mixtures thereof.

13. (Previously presented) The composition of claim 12, wherein the wax is selected from the group consisting of: microcrystalline waxes, paraffin, petroleum jelly, ozokerite, montan wax, beeswax, spermaceti, lanolin wax, lanolin alcohols, hydrogenated lanolin, hydroxylated lanolin, acetylated lanolin, fatty acids of lanolin, acetylated lanolin alcohol, candelila wax, carnauba wax, sumac wax, cocoa butter wax, shea butter, hydrogenated castor oil, hydrogenated palm oil, hydrogenated tallow, hydrogenated cocoa oil, hydrogenated soy oil, polyethylene, copolymerized polyethylene waxes, monomyristate of propylene glycol, myristyl myristate, methyloctadecane-oxypolysiloxane, poly (dimethylsiloxy) stearoxysiloxane, dimethicone, and mixtures thereof.

14. (Previously Presented) The composition of claim 6, wherein the emulsifying agent is a mixture of at least two emulsifiers, one having an HLB value of about 3 to about 7 and one having an HLB value of about 10 to about 19.
15. (Canceled)
16. (New) A composition comprising
- a) 30 to about 90 weight % vegetable oil,
 - b) about 5 to about 25 weight % stearic acid,
 - c) about 0.25 to about 5 weight % glycerol stearate,
 - d) about 0.25 to about 5 weight % PEG-100 stearate,
 - e) about 0.05 to about 5 weight % sucrose distearate,
 - f) 0 to about 5 weight % shea butter,
 - g) about 0.1 to about 5 weight % cetyl alcohol,
 - h) about 0.5 to about 5 weight % stearyl alcohol,
 - i) about 0.5 to about 5 weight % beeswax,
 - j) 0 to about 10 weight % maltodextrin,
 - k) 0 to about 10 weight % colloidal oatmeal,
 - l) about 5 to about 50 weight % sodium chloride, sugar, or both sodium chloride and sugar,
 - m) 0 to about 5 weight % silicone oil.
17. (New) A composition comprising about 49.3 weight % canola oil, about 10 weight % stearic acid, about 1.5 weight percent glycerol stearate, about 0.5 weight % sucrose distearate, about 0.5 weight % shea butter, about 1.6 weight % cetyl alcohol, about 0.6 weight % stearyl alcohol, about 2 weight % white beeswax, about 2 weight % maltodextrin, about 2 weight % colloidal oatmeal, and about 27.8 weight % sodium chloride.

18. (New) A composition comprising about 47.4 weight % canola oil, about 2 weight % carnauba wax, about 10 weight % stearic acid, about 1.5 weight % PEG-100 stearate, about 1.5 weight % glycerol stearate, about 0.5 weight % shea butter, about 1.6 weight % cetyl alcohol, about 1.6 weight % stearyl alcohol, about 2 weight % white beeswax, about 0.5 weight % sucrose distearate, about 2 weight % maltodextrin, about 2 weight % colloidal oatmeal, about 26.95 weight % sodium chloride, and about 0.75 weight % polysorbate 80.

REMARKS

After entry of the above amendments, the claims pending in the subject application are 6-14 and 16-18. Reconsideration of this application based on the Amendments and Remarks presented herein is respectfully requested.

Claim 6 has been amended. Support for the amendments can be found on page 4, line 98, page 8, line 231, and page 12, last line. Support for new claims 16-18 can be found in Examples 1-3 on pages 11-13.

New independent claims 16-18 exceed the number of independent claims previously paid for, but they do not exceed the total number of claims previously paid for. The Director - U.S. Patent and Trademark Office is hereby authorized to charge Deposit Account 03-2455 the claim fees necessary for entry of this amendment.

Concurrently with this response, a response is being filed in copending Serial No. 10/612,549. Previously, the file history for this copending application was cited in an Information Disclosure Statement filed on September 27, 2006. A copy of the response for Serial No. 10/612,549 is also being submitted to supplement the prior filing.

35 U.S.C. §102 REJECTIONS

Claims 6-8, 10-12, and 14 were rejected under 35 U.S.C. §102(b) as being anticipated by WO 01/85103 to Laden et al.

The Examples in Laden '103 do not disclose all of the materials claimed in their claimed amounts. Laden '103 defines glyceryl stearate, PEG-100 stearate, sorbitan stearate, Steareth-100, polysorbate-20, and other materials to be emulsifiers (page 11, lines 1-18).

Using Example 1, it was alleged that glyceryl stearate satisfied the "wax" element of claim 6. If it were used to satisfy the "wax" element, then the element requiring the emulsifying agent to be a mixture of at least two emulsifiers, one having an HLB value ≤ 8 and one having an HLB value >8 is not satisfied. If glyceryl stearate is considered to be the emulsifier with an HLB ≤ 8 , then there is no wax in the composition.

In Example 2, if glyceryl stearate and PEG-100 stearate are emulsifying agents, then there is no wax present at about 1 to 10 weight %.

In Example 8, if sorbitan stearate and polysorbate-20 are emulsifying agents, then there is no wax present at about 1 to 10 weight %.

Generally, if a material is defined to satisfy the requirements for one type of material, then the material does not satisfy the requirement for another material. None of the examples disclose the claimed combination of water immiscible emollient oil, emulsifying agent, skin exfoliative and/or skin polishing material, and wax in the claimed amounts and claimed types. Additionally, Laden '103 does not disclose or suggest the selection of all of these materials and in their claimed amounts to result in a combination that gives no visual phase separation after 49 days at 25°C (77°F) and 43.3°C (110°F).

Therefore, it is respectfully submitted that claims 6-8, 10-12, and 14 are not anticipated by WO 01/85103 to Laden et al.

Claims 6-9 and 12-14 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0133900 to McLaughlin et al.

McLaughlin '900 does not disclose selecting the combination of an emulsifying agent at a concentration of about 1 to 10 wt. % that is a mixture of at least two emulsifiers, one having an HLB value ≤ 8 and one having an HLB value >8 with a wax in the amount of about 1 to 10 weight % in combination with a water soluble, at least substantially insoluble in the composition, skin exfoliative and/or skin polishing material at a concentration of about 1 to about 50 wt. % and a water immiscible emollient oil at a concentration of 30 to about 85 wt. %. In the Examples, the amounts for calcium stearate, which can be considered a wax, along with other waxes is greater than 10 weight % maximum as is now claimed.

Therefore, it is respectfully submitted that claims 6-9 and 12-14 are not anticipated by U.S. Patent Application Publication No. 2003/0133900 to McLaughlin et al.

35 U.S.C. §103 REJECTIONS

Claims 6-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 4,673,526 to Zabotto et al.

Zabotto '526 does not disclose selecting the combination of an emulsifying agent at a concentration of about 1 to 10 wt. % that is a mixture of at least two emulsifiers, one having an HLB value ≤ 8 and one having an HLB value >8 with a wax in the amount of about 1 to 10 weight % in combination with a water soluble, at least substantially insoluble in the composition, skin exfoliative and/or skin polishing material at a concentration of about 1 to about 50 wt. % and a water immiscible emollient oil at a concentration of 30 to about 85 wt. %.

Also, the claimed combination of materials and amount of materials results in increased phase stability as measured by no visual phase separation after 49 days at 25°C (77°F) and 43.3°C (110°F). This phase stability resulting from the combination is not disclosed or suggested by Zabotto '526.

Therefore, it is respectfully submitted that claims 6-14 are patentable over United States Patent No. 4,673,526 to Zabotto et al.

Claims 6 and 8-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 5,888,951 to Gagnebien et al.

Gagnebien '951 does not disclose selecting the combination of an emulsifying agent at a concentration of about 1 to 10 wt. % that is a mixture of at least two emulsifiers, one having an HLB value ≤ 8 and one having an HLB value >8 with a wax in the amount of about 1 to 10 weight % in combination with a water soluble, at least substantially insoluble in the composition, skin exfoliative and/or skin polishing material at a concentration of about 1 to about 50 wt. % and a water immiscible emollient oil at a concentration of 30 to about 85 wt. %.

Also, the claimed combination of materials and amount of materials results in increased phase stability as measured by no visual phase separation after 49 days at

25°C (77°F) and 43.3°C (110°F). This phase stability resulting from the combination is not disclosed or suggested by Gagnebien '951.

Therefore, it is respectfully submitted that claims 6 and 8-15 are patentable over United States Patent No. 5,888,951 to Gagnebien et al.

New claims 16-18 are not disclosed or suggested by the cited references. The cited references do not provide direction to make the selection of the claimed materials and in their claimed amounts to arrive at the combination that is claimed.

In order to anticipate a composition when a reference discloses multiple variables and combinations, the reference must describe the composition with enough detail such that the composition is in the possession of the public. *In re Brown*, 329 F. 2d 1006, 1011, 141 U.S.P.Q. 245, 249 (C.C.P.A. 1964). Also, the reference must clearly and unequivocally disclose the composition or direct those skilled in the art to the composition without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the reference. *In re Arkley*, 455 F.2d 586, 587, 172 U.S.P.Q. 524, 526 (C.C.P.A. 1972). Additionally, under the obviousness standard, while it may be obvious to try to vary all parameters or try each of numerous possible choices, the reference must suggest the combination and selection of parameters for the composition. *In re O'Farrell*, 853 F.2d 894, 903, 7 U.S.P.Q.2d 1673, 1681 (Fed. Cir. 1988).

Therefore, it is respectfully submitted that new claims 16-18 are patentable over the cited references.

In view of the amendments and remarks contained above, Applicants respectfully request reconsideration of the application, withdrawal of the 35 U.S.C. §102 and §103 rejections, and request that a Formal Notice of Allowance be issued for claims 6-14 and 16-18. Should the Examiner have any questions about the above remarks, the undersigned attorney would welcome a telephone call.

Respectfully submitted,

Johansson *et al.*

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